IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 27248 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NASIR MOHD. NOOR MAHMAD SHAIKH - Petitioner(s)
Versus
THE STATE OF GUJARAT THRO' THE SECRETARY & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
MR AY KOGJE, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/05/2007

ORAL JUDGMENT

1. Heard learned advocate Shri Prajapati for the petitioner and learned AGP Shri Kogje for the

respondents.

2. In this petition, the detenue has challenged the order dated 5th December, 2006 passed by the Commissioner of Police, Ahmedabad City by which he was pleased to put the petitioner under preventive detention in exercise of powers under Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985(here-in-after referred to as “PASA”). The detaining authority was of the opinion that activities of the petitioner are prejudicial to the public order. It is therefore, necessary to prevent him from committing such acts to place him under detention. To come to such a conclusion, the detaining authority relied on one criminal case No. 5059/2006 dated 1st December, 2006 filed against the petitioner for having committed offences punishable under the Bombay Prohibition Act. The petitioner was found transporting country-made liquor of about 1225 litres on 1st December, 2006. After taking into consideration the statements recorded by the investigation in connection with the said criminal case, the detaining authority formed an opinion that it is necessary to place the petitioner under detention.

3. It is this detention order which the petitioner has challenged in the present petition.

4. Learned advocate Shri Prajapati for the petitioner has submitted that the detaining authority erred in concluding that the activities of the petitioner are prejudicial to public order on the basis of only a single case of alleged bootlegging.

4.1 Reliance was placed on the decision of Learned Single Judge of this Court dated 10th March, 1997 passed in Special Civil Application No.10166/1996 wherein the learned Single Judge relying on several decisions of Apex Court found that the incidents of bootlegging in which the detenue therein was involved are essentially individual cases and would be questions of law and order and not public order. On that ground, the detention was quashed.

4.2 Reliance was also placed on the decision of Learned Single Judge of this Court in the decision dated 10th March, 2004 passed in Special Civil Application No.16409/2003, wherein learned Single Judge observed that even in cases of large quantify of liquor being found, the same would tantamount to threat to pubic order at large.

4.3 Reliance was also placed on the decision of Learned Single Judge of this Court dated 10th January, 2005 passed in Special Civil Application No.10575/2004 wherein learned Judge

made following observations in paragraph-8:

> "8. In the present case also, admittedly, the only material which the detaining authority took into consideration is the fact of two criminal cases registered against the detenu under the Bombay Prohibition Act. Needless, it is observed that to find out as to whether a given case is a case of breach of public order or breach of public health, the detaining authority must take into consideration credible and cogent material. Merely, registration of the cases under Bombay Prohibition Act against the detenu is not material to infer that the detenu was engaged in illegal activity prejudicial to the public health and maintenance of public order. The material, therefore, relied upon by the detaining authority cannot be considered to be material germane for the purpose of consideration of the threat to the public health and public order. The order under challenge, therefore, is required to be quashed and set aside on this ground alone."

4.4 In yet another decision dated 16th June, 2006 passed in Special Civil Application No.24191/2005, Learned Single Judge of this Court observed that the detenue was found to have been involved in 13 different criminal cases. Learned Single Judge made following observations:

> "It is required to be noted that in the detention order it is not mentioned as to how the activity of the petitioner is prejudicial to public health and it can safely be said that the petitioner may be guilty of violating law of the land but it cannot be said that the activity of the petitioner is prejudicial to public health.
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> Considering the aforesaid aspect of the matter as well as after considering the judgement of the Division Bench of this Court and considering the fact that there is nothing to show that the activity of the petitioner is prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activity of the petitioner is prejudicial to public health. Therefore, the impugned order of detention is required to be quashed and set aside."

5. On the other hand, learned APP opposed the petition and submitted that the petitioner was

found to be carrying large quantify of liquor. His activity would therefore, be prejudicial to public at large. He invited my attention to the provisions contained in section 3 of PASA and opposed the petition.

6. Having considered the submissions made and having perused the material on record, the petitioner could at best be categorised as bootlegger. His activities may be prejudicial to law and order. There is nothing on record to suggest that same was a question of public order. This has been reiterated by this Court in the above noted cases which are on the basis of decisions of Apex Court.

7. In the result, I find that petition cannot be sustained and same is therefore, rejected. Detention order is quashed. Rule made absolute.

8. Since the detention order is quashed, the petitioner shall be released forthwith unless there is any other detention or criminal case pending against him.

Direct service is permitted.

(Akil Kureshi,J.)

(raghu)